

COOLEY LLP
JEFFREY M. GUTKIN (216083)
(jgutkin@cooley.com)
AARTI REDDY (274889)
(areddy@cooley.com)
AMY M. SMITH (287813)
(amsmith@cooley.com)
MORGAN LEWIS (322205)
(melewis@cooley.com)
JULIA M. IRWIN (352861)
(Jlirwin@cooley.com)
3 Embarcadero Center, 20th Floor
San Francisco, California 94111-4004
Telephone: +1 415 693 2000
Facsimile: +1 415 693 2222

Attorneys for Defendant
LINKEDIN CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

V.R. individually and on behalf of all others similarly situated,

Plaintiff,

LINKEDIN CORPORATION,
Defendant.

COOLEY LLP
JORGE L. SARMIENTO (*Pro Hac Vice*)
(jsarmiento@cooley.com)
55 Hudson Yards
New York, NY 10001-2157
Telephone: +1 212 479 6000
Facsimile: +1 212 479 6275

Case No. 5:24-CV-07399-EJD

**DEFENDANT LINKEDIN CORPORATION'S
REQUEST FOR JUDICIAL NOTICE**

Date: March 6, 2025
Time: 9:00 a.m.
Dept: Courtroom 4, 5th Fl.
Judge: Edward J. Davila
Trial Date: TBD
Date Action Filed: October 23, 2024

1 **I. DOCUMENTS SUBJECT TO THIS REQUEST**

2 Pursuant to Rule 201 of the Federal Rules of Evidence and related authority, Defendant
 3 LinkedIn Corporation (“LinkedIn”) hereby respectfully requests that the Court deem the following
 4 documents (attached as Exhibits A, B, C, D, and E, to the Declaration of Aarti Reddy (“Reddy
 5 Decl.”)) incorporated by reference into Plaintiff’s Class Action Complaint (ECF No. 1,
 6 “Complaint” or “Compl.”), and/or take judicial notice of these documents in conjunction with
 7 LinkedIn’s concurrently filed Motion to Dismiss the Class Action Complaint:

- 8 • [Exhibit A](https://business.linkedin.com/marketing-solutions/insight-tag): A webpage from LinkedIn’s website titled “Insight Tag”; cited, quoted, and
 9 relied upon in the Complaint, and publicly available at
<https://business.linkedin.com/marketing-solutions/insight-tag>.
- 10 • [Exhibit B](https://web.archive.org/web/20240926181159/https://www.linkedin.com/legal/sas-terms): The version of the LinkedIn Ads Agreement that was operative at the time
 11 Plaintiff filed her Complaint, and that was last updated on August 8, 2024. This
 12 document is publicly available on the Internet Archive at
<https://web.archive.org/web/20240926181159/https://www.linkedin.com/legal/sas-terms>.
- 13 • [Exhibit C](https://web.archive.org/web/20241009031247/https://www.linkedin.com/legal/ads-policy): The version of the LinkedIn’s Advertising Policies that were operative at the
 14 time Plaintiff filed her Complaint, and that was last updated on May 13, 2024. This
 15 document is publicly available through the Internet Archive at
<https://web.archive.org/web/20241009031247/https://www.linkedin.com/legal/ads-policy>.
- 16 • [Exhibit D](https://www.linkedin.com/legal/privacy-policy): The operative version of the LinkedIn Privacy Policy that was last updated
 17 on September 18, 2024; cited, quoted, and relied upon in the Complaint; and publicly
 18 available at <https://www.linkedin.com/legal/privacy-policy>.
- 19 • [Exhibit E](#): The Registration of Foreign Limited Liability Company record for Village
 20 Practice Management Company, LLC, maintained by the New Jersey Department of the
 21 Treasury, Division of Revenue.

1 **II. INTRODUCTION**

2 Plaintiff V.R. claims that LinkedIn used its web pixel (the “Insight Tag”) to “track[] her
 3 private activity on CityMD’s Website” while she scheduled a medical appointment. (Compl. ¶ 8.)
 4 In connection with its motion to dismiss, LinkedIn requests that the Court consider publicly-
 5 available documents that are central to Plaintiff’s claims and that Plaintiff herself repeatedly cites
 6 in her pleading, including a portion of LinkedIn’s website describing the Insight Tag technology
 7 and LinkedIn’s Privacy Policy. Likewise, LinkedIn also seeks judicial notice of its Ads Agreement,
 8 Advertising Policies, and Privacy Policy. These agreements are plainly judicially noticeable—
 9 each is publicly available, from a source whose authenticity could not reasonably be questioned,
 10 and none are being offered for the truth of the matter asserted therein. LinkedIn offers its Ads
 11 Agreement and Advertising Policies to show its state of mind, and its Privacy Policy to show
 12 Plaintiff had notice of the alleged conduct she challenges. Accordingly, Exhibits A-E are each
 13 either incorporated by reference or the proper subject of judicial notice, and the Court should
 14 consider them for the reasons set forth below.

15 **III. LEGAL STANDARD**

16 “[C]ourts must consider the complaint in its entirety, as well as other sources courts
 17 ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents
 18 incorporated into the complaint by reference, and matters of which a court may take judicial notice.”
 19 *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

20 At the Rule 12(b)(6) stage, a district court may incorporate by reference and thus consider
 21 any “documents whose contents are alleged in a complaint and whose authenticity no party
 22 questions,” regardless of whether the plaintiff attached the document to its pleading. *Davis v. HSBC*
 23 *Bank Nev., N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012) (quoting *Knievel v. ESPN*, 393 F.3d 1068,
 24 1076 (9th Cir. 2005)). The Ninth Circuit has held that “[a] court may consider evidence on which
 25 the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is
 26 central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to
 27 the 12(b)(6) motion.” *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (internal quotations
 28 omitted). In these circumstances, a defendant may offer a document incorporated by reference and

1 the district court may treat it as part of the complaint, and thus “may assume that its contents are
 2 true for purposes of a motion to dismiss under Rule 12(b)(6).” *Id.* (internal citation omitted).

3 Furthermore, a court ruling on a motion to dismiss may grant judicial notice of facts
 4 generally known within the jurisdiction of the trial court or which “can be accurately and readily
 5 determined from sources whose accuracy cannot be reasonably questioned,” such that they are “not
 6 subject to reasonable dispute.” Fed. R. Evid. 201(b)(2); *see also Daniels-Hall v. Nat'l Educ. Ass'n*,
 7 629 F.3d 992, 999 (9th Cir. 2010) (same). Where the party seeking judicial notice provides the
 8 court with a copy of the relevant webpage, “websites and their contents may be proper subjects for
 9 judicial notice” as a “general matter[.]” *Threshold Enters. Ltd. v. Pressed Juicery, Inc.*, 445 F. Supp.
 10 3d 139, 145-46 (N.D. Cal. 2020) (citation omitted). Accordingly, courts in this district have
 11 routinely taken judicial notice of webpages on the websites of private entities. *See, e.g., Brown v.*
 12 *Google LLC*, 525 F. Supp. 3d 1049, 1061 (N.D. Cal. 2021) (taking notice of defendant Google’s
 13 webpages because they “appear[ed] on publicly available websites and [were] thus proper subjects
 14 for judicial notice”).

15 **IV. ARGUMENT**

16 **A. The Complaint Incorporates Exhibits A and D by Reference.**

17 As set forth below, Exhibits A and D are squarely within the bounds of the Ninth Circuit’s
 18 binding incorporation by reference doctrine. *See, e.g., Davis*, 691 F.3d at 1152; *Marder*, 450 F.3d
 19 at 448; *Knievel*, 393 F.3d at 1076.

20 **Exhibit A.** Plaintiff could not dispute the authenticity of this document, which is a webpage
 21 on LinkedIn’s website titled “Insight Tag” that is currently accessible. (Reddy Decl. ¶ 2.) Not only
 22 does Plaintiff cite this webpage in her Complaint no fewer than five times (Compl. ¶¶ 24-25 n. 17,
 23 19-22), but she also directly quotes from it. (Compl. ¶ 25 (“LinkedIn ‘recommend[s] using the
 24 JavaScript-based Insight Tag or Conversions API . . .’”) (citing LinkedIn.com, “Insight Tag,”
 25 <https://business.linkedin.com/marketing-solutions/insight-tag> (“We ‘recommend using the
 26 JavaScript-based Insight Tag or Conversions API . . .’”)).) Plaintiff also relies on information from
 27 this same webpage to allege additional facts regarding the Insight Tag. (*Id.* (describing the
 28 mechanics of the Insight Tag with respect to first versus third-party cookie tracking));

1 LinkedIn.com, “Insight Tag,” <https://business.linkedin.com/marketing-solutions/insight-tag>
 2 (explaining that Insight Tag “Allows you to utilize both third party and first party cookie settings
 3 to track conversions”). As these aforementioned paragraphs illustrate, this webpage is one of the
 4 primary sources of information that Plaintiff uses to describe the challenged technology. Therefore,
 5 in addition to being unquestionably authentic and cited repeatedly in Plaintiff’s Complaint, the
 6 “Insight Tag” webpage also provides facts central to Plaintiff’s claims.

7 **Exhibit D.** Exhibit D, the operative version of the LinkedIn Privacy Policy that was last
 8 updated on September 18, 2024, is likewise incorporated by reference into Plaintiff’s Complaint.
 9 As with the “Insight Tag” webpage, Plaintiff cites the Privacy Policy itself no fewer than five times
 10 throughout her Complaint (Compl. ¶¶ 32-35 nn. 27, 29-32), and quotes from it at length. (Compl.
 11 ¶¶ 33-35.) Further, the contents of the Privacy Policy underlie Plaintiff’s allegation that she had a
 12 reasonable expectation of privacy in the challenged data, which is central to her claim that LinkedIn
 13 has engaged in conduct that constitutes an actionable invasion of privacy under the California
 14 Constitution. (*See* Compl. ¶ 87.) This Exhibit therefore forms the basis of her constitutional claim.
 15 Finally, Plaintiff has no reasonable basis on which to challenge this document’s authenticity, as it
 16 remains available on LinkedIn’s website. (Reddy Decl. ¶ 5). Accordingly, and consistent with
 17 court rulings in other web analytics cases, the Court should consider this document incorporated
 18 by reference as well. *See R.C. v. Walgreen Co.*, 733 F. Supp. 3d 876, 884-85 (C.D. Cal. 2024)
 19 (finding defendant’s privacy policy incorporated by reference); *Hammerling v. Google LLC*, 2022
 20 WL 17365255, at *3 (N.D. Cal. Dec. 1, 2022) (same); *Graham v. Noom, Inc.*, 533 F. Supp. 3d 823,
 21 834 (N.D. Cal. 2021) (same).

22 **B. Exhibits B, C, D and E Are Each Judicially Noticeable.**

23 Exhibits B, C, D, and E are proper subjects of judicial notice because they are each publicly
 24 available and otherwise capable of “accurate[] and read[y] determination” by resort to “sources
 25 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Specifically, Exhibits B,
 26 C, and D are publicly-available webpages that either are or were recently accessible on LinkedIn’s
 27 website (*see* Reddy Decl. ¶¶ 3-5). It is well-established that “[w]ebsites and their contents may []
 28 be proper subjects for judicial notice.” *Garcia v. Best W. Norwalk Inn, LLC*, 2021 WL 4260406, at

1 *2 (C.D. Cal. June 14, 2021). “Courts in this district have found that in general, websites and their
 2 contents may be judicially noticed.” *Pac. Overlander, LLC v. Kauai Overlander*, 2018 WL
 3 3821070, at *2 (N.D. Cal. Aug. 10, 2018); *see also Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1210
 4 n.7 (9th Cir. 2017) (taking judicial notice of a policy on a publicly-accessible website); *Daniels-*
 5 *Hall*, 629 F.3d at 998-99 (taking judicial notice of a list of vendors on a publicly-accessible
 6 website); *In re Toll Roads Litig.*, 2018 WL 6131178, at *2 (C.D. Cal. Jan. 12, 2018) (noting that
 7 “[c]ourts may take judicial notice of publicly available policies” on websites). Further, as this Court
 8 has recognized, this presumption extends to webpages made available through the Internet
 9 Archive’s Wayback Machine. *Parziale v. HP, Inc.*, 2020 WL 5798274, at *3 (N.D. Cal. Sept. 29,
 10 2020) (J. Davila) (collecting cases finding same).

11 Each of these exhibits are likewise indisputably authentic, as LinkedIn has not only
 12 provided direct hyperlinks but attached screen captures of each. *See Threshold Enters., Inc.*, 445
 13 F. Supp. 3d at 145 (taking judicial notice of “screenshots and printouts of websites of the parties
 14 and other third parties not involved in this lawsuit”); *Garcia*, 2021 WL 4260406, at *2. Finally,
 15 LinkedIn does not offer any of these documents for the truth of the matter asserted therein. *See*
 16 *Pac. Overlander, LLC*, 2018 WL 3821070, at *2 (taking judicial notice of defendant’s website,
 17 printouts of its Instagram account, and printouts of its Google reviews in copyright and trademark
 18 infringement suit “not for the truth of the contents therein” but to inform Court’s jurisdiction
 19 analysis). **Exhibit B** is LinkedIn’s Ads Agreement and **Exhibit C** is LinkedIn’s Advertising
 20 Policies. Each of these documents were operative and publicly available on LinkedIn’s website at
 21 the time the Plaintiff filed her Complaint, and each remains publicly available on the Internet
 22 Archive. (Reddy Decl. ¶¶ 3-4.) **Exhibit D** is LinkedIn’s current Privacy Policy, which was
 23 operative at the time Plaintiff filed her Complaint, and that is presently available on LinkedIn’s
 24 website. (Reddy Decl. ¶ 5.) LinkedIn relies on Exhibits B and C for the sole purpose of showing
 25 its own state of mind—*i.e.*, that LinkedIn did not intentionally receive the challenged information
 26 but specifically advised advertisers not to transfer sensitive data to LinkedIn—and courts may take
 27 judicial notice of documents that evidence state of mind. (Motion to Dismiss at 15, 17); *Yamauchi*
 28 *v. Cotterman*, 84 F. Supp. 3d 993, 1012 n. 11 (N.D. Cal. 2015) (“The Court takes judicial notice of

1 the existence of these documents and . . . need not take judicial notice of the accuracy of the contents
 2 because the only purpose of the judicial notice is establishing Yamauchi's state of mind and
 3 knowledge."); *Westley v. Oclaro, Inc.*, 897 F. Supp. 2d 902, 929 (N.D. Cal. 2012), *on*
 4 *reconsideration in part* (Jan. 10, 2013) (taking judicial notice of the existence of stock sale
 5 documentation for purposes of assessing state of mind).

6 Further, because LinkedIn relies on Exhibit D (its privacy policy) solely to show that
 7 Plaintiff had notice of the alleged conduct she challenges, *id.* at 22, judicial notice is appropriate
 8 for Exhibit D as well. *See, e.g., Pirani v. Netflix, Inc.*, 710 F. Supp. 3d 756, 767 (N.D. Cal. 2024)
 9 (taking judicial notice of documents showing what information the market had notice of in
 10 securities action); *Schrader Cellars, LLC v. Roach*, 2023 WL 3898932, at *7 (N.D. Cal. June 8,
 11 2023) ("The Court properly took judicial notice of pleadings [in related litigation] to show . . . when
 12 Cellars was placed on notice of Roach's claims."); *Viramontes v. Pfizer, Inc.*, 2015 WL 9319497,
 13 at *9 (E.D. Cal. Dec. 23, 2015), *report and recommendation adopted*, 2016 WL 704715 (E.D. Cal.
 14 Feb. 23, 2016) (granting judicial notice of report to show when defendants were on notice of content
 15 in the report). Accordingly, the Court should take judicial notice of Exhibits B, C, and D.

16 Finally, **Exhibit E** is the Registration of Foreign Limited Liability Company record for
 17 Village Practice Management Company, LLC, maintained by the New Jersey Department of the
 18 Treasury, Division of Revenue, for Village Practice Management, LLC, which Plaintiff alleges to
 19 be the company that "own[s] and operate[s] . . . CityMD." (Compl. at ¶ 1.) This record is publicly
 20 accessible from the New Jersey Department of the Treasury. (Reddy Decl. ¶ 6). As this Court has
 21 recognized, official documents reflecting a company's place of incorporation and headquarters are
 22 generally not subject to reasonable dispute and are judicially noticeable. *Neal v. Select Portfolio*
 23 *Servicing, Inc.*, 2017 WL 878380, at *2 (N.D. Cal. Mar. 6, 2017) (J. Davila) (taking judicial notice
 24 of document demonstrating defendant bank's headquarters); *Ishiyama v. Google LLC*, 2022 WL
 25 17970190, at *2 n.1 (N.D. Cal. Dec. 27, 2022) (J. Davila) (taking judicial notice *sua sponte* of the
 26 fact that Google is headquartered and has its principal place of business in Mountain View based
 27 on California Secretary of State website). Thus, the Court should take judicial notice of this
 28 document as well.

V. CONCLUSION

For these reasons, LinkedIn requests that the Court consider Exhibits A and D incorporated by reference into the Complaint and that the Court take judicial notice of Exhibits B, C, D, and E.

Dated: January 27, 2025

COOLEY LLP

By: /s/ Jeffrey M. Gutkin
Jeffrey M. Gutkin

Attorney for Defendant
LINKEDIN CORPORATION

313748935